SENTUL MURNI SDN BHD

v.

AHMAD AMIRUDIN KAMARUDIN & ORS

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
SITI NORMA YAAKOB JCA
DENIS ONG JIEW FOOK JCA
[CIVIL APPEAL NO: W-02-593-98]
21 AUGUST 2000

LAND LAW: *Licence - Whether previous owner consented to the occupation - Encouragement and acquiescence of previous owners*

TORT: *Trespass to land - Unlawful occupier - Whether the previous owner consented to the occupation - Whether squatter simpliter or licensees*

As the registered owner of the land, the appellant commenced an action against the respondents claiming that they were trespassers and prayed for vacant possession, *mesne* profits and damages. Meanwhile, the respondents contended that they were not squatters *simpliciter* but were lawful occupants of the land as licensees coupled with equity. Further the respondents contended that and their continuous occupation of the land was known to or encouraged or acquiesced by the appellants' predecessors and that the appellant knew or ought to have known of the equity. The trial judge gave vacant possession to the appellant subject to the appellant compensating the respondents *inter alia*, for the costs of relocation and rejected the appellant's claim for special damages. The appellant appealed.

Held :
Per Shaik Daud Ismail JCA

[1] Based on the evidence adduced, the trial judge was correct in holding that the respondents were not squatters *simpliciter* but were in occupation of the land as licensees and with the consent of the previous owner.

[Appeal dismissed with costs; confirmed findings and orders of trial judge.]

*[**Bahasa Malaysia** Translation of Headnotes]*

Sebagai tuanpunya berdaftar, perayu memulakan satu tindakan terhadap responden-responden mendakwa yang mereka adalah penceroboh dan mununtut milikan kosong, hasil perantaraan dan gantirugi. Sementara itu,

responden-responden mendakwa bahawa mereka bukanlah setinggan semata tetapi merupakan penghuni sah tanah tersebut sebagai pemegang lesen berekuiti. Selanjutnya responden-responden mendakwa bahawa mereka menduduki tanah tersebut secara berterusan dan ini diketahui oleh atau digalakkan atau dipersetujui oleh tuanpunya terdahulu dan perayu tahu ataupun patut mengetahui ekuiti ini. Hakim bicara memberikan milikan kosong kepada perayu tertakluk kepada pemberian pampasan oleh perayu kepada responden-responden untuk antara lain kos perpindahan dan menolak tuntutan perayu untuk gantirugi khas. Perayu merayu.

Diputuskan:
Oleh Shaik Daud Ismail HMR

[1] Berdasarkan keterangan yang dikemukakan, hakim bicara, memutuskan dengan betul bahawa responden-responden bukanlah setinggan semata tetapi menduduki tanah tersebut sebagai pemegang lesen dan dengan persetujuan tuanpunya terdahulu.

[Rayuan ditolak dengan kos; Keputusan dan perintah hakim bicara disahkan.]

Case(s) referred to:
Bohari Taib & Ors v. Pengarah Tanah dan Galian Selangor [1991] 1 CLJ 647 ***(refd)***
Lebbey Sdn Bhd v. Chong Wooi Leong & Anor [1998] 1 CLJ 1072 ***(refd)***

For the appellant - G Gunaseelan (T Gunaseelan & K Balaguru with him); M/s G Gunaseelan & Assoc
For the respondents - Salleh Abbas (Sivarasa Rasiah & Kamarul Hisham with him); M/s Daim & Gamany

[Appeal from High Court, Kuala Lumpur; Civil Suit No: S2-22-157-96]

Reported by Izzaty Izzuddin

JUDGMENT

Shaik Daud Ismail JCA:

The appellant is the registered owner of land known as HS(D) 66601 PT 2473 Mukim Setapak, Wilayah Persekutuan which consists of 487,533 square feet of land (the said land). The said land was registered in the appellant's name on 6 July 1990. At that material time all the four respondents and a number of others were living on the said land. The appellant purchased the land from one STLR Sdn Bhd who became the owner of the land on 26 October 1985. Prior to that date the land belonged to the government.

As the registered owner, the appellant filed a claim against the four respondents claiming that they were trespassers and prayed for vacant possession, mesne profits from 11 October 1993, until delivery of vacant possession, damages for trespass, interest and costs.

The respondents denied that they were trespassers. They contended that they were the lawful occupants of the said land as licensees coupled with equity and that the appellant knew or ought to have known of the equity. They also contend that their continuous occupation of the said land was known to or expressly and/or impliedly acquiesced and/or encouraged by the State Authority and/or Dewan Bandaraya Kuala Lumpur, the predecessors of the appellant.

After a full and lengthy trial in which the learned judge traced the history of the said land, he came to the conclusion that on the facts before him, he was satisfied that the respondents were not squatters *simpliciter* but were in occupation of the said land as licensees and with the consent of the state authority that they could occupy or continue to occupy the said land. In the light of that finding the learned judge gave vacant possession to the appellant subject to the appellant compensating the four respondents for all costs incurred in the construction and renovation of their respective houses, or alternatively the costs of the present value of the said houses to be assessed by an independent valuer to be mutually agreed to by the parties or if they fail to agree, to be appointed by the court, and all costs incidental to relocating the respondents. The learned judge also rejected the appellant's claim for special damages on the ground that they have not been sufficiently proved.

On our perusal of the records of appeal and after considering the submissions of both learned counsel, we find ourselves unable to disagree with the findings of the learned judge. There were ample evidence before him to arrive at those conclusions.

The central issue before the court was the status of the respondents as far as the said land is concerned. The appellant contended all along that the respondents were squatters simpliciter and therefore they were trespassers on the said land. The respondents on the other hand, are not claiming any title to the said land. That the appellant is the registered owner of the said land is undisputed. The respondents while conceding that the appellant is now the registered owner, are contending that they are not squatters simpliciter but they occupied the said land with a licence in equity.

The said land appeared to have a chequered history. Initially the said land was a Malay Reserve Land but such status was cancelled. Based on the evidence of a land surveyor one Seah Kok Seang @ Sheah Si Ba, who testified as an expert witness, the learned judge accepted his expert testimony that the

Malay Reservation status was degazetted by Gazette Notification No 4851/1932 dated 22 June 1932. This was confirmed in a letter from the Director of Land & Mines dated 9 February, 1996. The respondents contend that when the appellant became the registered owner of the said land, it knew or ought to have known of the equity which had existed long before it became the owner. The respondents also contended that their continuous occupation of the said land was known to or expressly or impliedly acquiesced and/or encouraged by the State Authority or by Dewan Bandaraya. It is also in evidence that between 1960 and 1990 various amenities were provided by the authorities such as a town hall, three mosques, water and electricity supply, telephone services, a clinic and the roads were paved. Dewan Bandaraya built a second town hall and a building to conduct women's development activities and a number of religious schools. The respondents also led evidence to show that this village, called Kampung Chubadak was self-governed and self administered. There was also evidence that prior to the formation of the Wilayah Persekutuan, the Selangor State Government formed a body known as Jawatankuasa Kemajuan dan Keselamatan Kampong (JKKK) in this village which was headed by the Ketua Kampong. When Wilayah Persekutuan was established on 1 February 1970, the JKKK was replaced by Dewan Bandaraya officials and the post of Ketua Kampong was abolished. In 1987, however, this post was revived and the Ministry of Wilayah Persekutuan appointed the former Ketua Kampong to administer this village. In the 1960s, the Kuala Lumpur District Officer prepared a layout plan for the former mining land at which Kampong Chubadak Tambahan and Kampong Puah Seberang are situated, the object of which was to sub-divide the said land into various lots which would be allocated to the then residents occupying the said land. It is the contention of the respondents that between 1960 and 1990, many dignitaries made official visits to this village and they included politicians and royalties. In fact during the official launch of the Klinik Kesihatan Kanak-Kanak dan Ibu in Kampong Chubadak Tambahan, the then Menteri Besar, Dato' Harun Idris, promised that the Selangor State Government would take certain measures to enable the residents of the village and an adjoining village to obtain ownership of the land they occupied. This, the learned judge found, was not a mere political gimmick but was based on a decision of the then Selangor State Executive Council. It was contended that the Menteri Besar had no authority to bind the State Authority and his promise is insufficient. The judge was mindful of the case of *Lebbey Sdn Bhd v. Chong Wooi Leong & Anor* [1998] 1 CLJ 1072, where it was held that 'state authority' under the National Land Code is defined for the purpose of Selangor as the ruler, but in the present case the then Menteri Besar was in fact conveying the decision of the State Executive Council and for all practical purposes the ruler must act on the advice and recommendation of the State Executive Council. In 1974 the then Menteri Besar also informed

the residents that the State Government was going to issue separate titles to the settlers. He also referred to the minutes of a meeting dated 9 December 1976, which indicated that there was approval given by the State Executive Committee of Selangor on 9 August 1962, to alienate the said land to the Malay occupants residing in the land. After the formation of the Wilayah Persekutuan in 1974 and on 10 January 1976, the Land Executive Committee of Wilayah Persekutuan, which is the equivalent of the State Commissioners for Lands and Mines in other states, expressly agreed that the said approval of the Selangor State Executive Committee be carried out by the Collector of Land Revenue of Wilayah Persekutuan. There was no evidence that the Land Executive Committee of Wilayah Persekutuan had changed or revoked its policy in relation to the occupation of the Malay residents of Kampong Chubadak. All these remained unchallenged.

Having traced the history of the said land and as to how and when each of the respondents came to be on the said land, and considering the Federal Court decision in *Bohari Taib & Ors v. Pengarah Tanah dan Galian Selangor* [1991] 1 CLJ 647, the learned judge came to the conclusion that the respondents were not squatters *simpliciter*, as the appellant was trying to make them out to be. He found there was consent and licence from the State Authority that the respondents can occupy or continue to occupy the said land. The respondents also established that based on the State Authority's acquiescence, encouragement and approval, they expended money and labour to improve and further develop the land in Kampong Chubadak Tambahan, which was a former mining land. All these were known to the predecessors of the appellant.

Therefore, on the evidence before the learned judge, he rightly came to the conclusion as he did and we have no reason to disagree. We dismissed the appeal with costs and confirmed the findings and orders of the learned judge and also ordered that the deposit be paid out to the respondents to account of their taxed costs.